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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,457	03/30/2004	James Matthew Hitch	7395	3155

7590 03/30/2006

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Littleton, CO 80127

EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/812,457

Applicant(s)

HITCH, JAMES MATTHEW

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage * application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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1. Claims 1-8, 14-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for the limitation that "about 25 to about 50 wt. percent fibers having a length of less than about 0.4 inch long and about 75 to about 50 wt. percent fibers having a length at least about 0.45 inch long". The specification provides support for a major portion of the fiber being at least about 0.45 inches long and a minor portion of the fiber being shorter than about 0.4 inches, and also provides support for 75 wt. Percent fiber being at least about 0.45 inches long and about 25 wt. Percent being about 0.2 inches long.

2. Claims 1-8, 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the recitation that the mat has "a reduced amount of "stand up fibers" renders the claim vague and indefinite because it is not clear to what the mat is being compared to, i.e., reduced as compared to what?

3.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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2. Claims 1-8, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Peng et al, U.S. Patent Publication 2003/0054714. Peng discloses a fiber mat of improved tear strength comprising fibers having two different lengths. The mat can comprise a mixture of fibers where from about 0 to about 100 wt. % of the fibers have an average length of from about 0.5 to 60 mm which corresponds to 0.019-2.36 inches and about 0 to about 100 wt. % of the fibers having an average length of from about 10 to about 150mm which corresponds to 0.393-5.9 inches and wherein more preferably, the nonwoven comprises about 20-to about 80 wt. % of fibers having an average length of from about 10 to about 45 mm which corresponds to 0.393 – 1.7 inches and from about 20 to about 80 weight % of the fibers have an average length of from about 30- about 80 mm which corresponds to about 1.18-3.14 inches. These values encompass the claimed ranges and amounts of fiber length. See paragraph 0019. The fibers can have a diameter of 1-100 microns with 5-25 microns being more highly preferred. See paragraph 0019. The binder is present in an amount of 5-50 weight %. See paragraph 0017. Suitable binders include those claimed. See paragraph 0022-0025. The nonwoven fiber mat can have asphalt layers applied to its surface, which corresponds to the at least one different layer claimed in claim 5. See paragraph 0017 and 0027.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 3-4, 7-8, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peng et al, U.S. Patent Publication 2003/0054714. Peng discloses a nonwoven mat as set forth above. While the ranges set forth in Peng encompass the claimed ranges and therefore anticipate the claims, Peng does not set explicitly set forth the particularly claimed ranges and proportions set forth in claims 2-3, 7-8 and 14-15. although Peng does broadly encompass all the claimed ranges and proportions. However, Peng et al teaches that the use of two different fiber lengths, wherein the lengths and proportion are selected as taught in paragraph 0019, results in a mat having improved tear strength. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the optimum lengths and proportions from the ranges broadly disclosed by Peng through the process of routine experimentation, motivated by the expectation of producing a nonwoven mat having optimum tear resistance.

5. Applicant's arguments filed 1/9/06 have been fully considered but they are not persuasive. Applicant argues that Peng does not disclose the claimed proportions. However, the ranges of Peng completely encompass the claimed ranges both in terms of fiber length and proportions. Therefore, Peng does anticipate the claimed invention. Further, with regard to the 103 rejection, Peng teaches selecting the lengths and proportions so as to maximize tear resistance of the nonwoven mat. Therefore, Peng teaches that the fiber length and proportions are result effective variables and therefore it would have been obvious to one of ordinary skill in the art to have optimized the particular lengths and proportions selected. With regard to the argument that Peng's

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invention has a different use, the instant claims are drawn to a nonwoven fiber mat, not to a use of the mat. Further, tear resistance is a desirable property in any fabric.

Finally, it is not necessary that the motivation found in the reference be the same as applicant's motivation. Therefore, the rejection is maintained.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

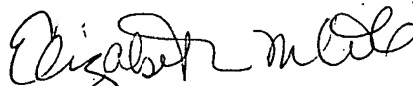
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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

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